

1-1 By: Eiland (Senate Sponsor - Ellis) H.B. No. 1293  
1-2 (In the Senate - Received from the House April 23, 2009;  
1-3 May 1, 2009, read first time and referred to Committee on State  
1-4 Affairs; May 14, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 May 14, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1293 By: Ellis

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the sale and marketing of life insurance and annuities.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle A, Title 7, Insurance Code, is amended  
1-13 by adding Chapter 1116 to read as follows:

1-14 CHAPTER 1116. DISCLOSURE OF INFORMATION REGARDING ANNUITY  
1-15 TRANSACTIONS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 1116.001. PURPOSES. The purpose of this chapter is to:

1-18 (1) protect consumers and foster consumer education by  
1-19 providing standards for the disclosure of certain minimum  
1-20 information about annuity contracts; and

1-21 (2) ensure that purchasers of annuity contracts  
1-22 understand certain basic features of annuity contracts.

1-23 Sec. 1116.002. GENERAL DEFINITIONS. In this chapter:

1-24 (1) "Buyer's guide" means a buyer's guide published or  
1-25 adopted by the department under Section 1116.006.

1-26 (2) "Charitable gift annuity" has the meaning assigned  
1-27 by Section 102.001.

1-28 (3) "Contract owner" means the owner named in the  
1-29 annuity contract or, in the case of a group annuity contract, the  
1-30 certificate holder.

1-31 (4) "Funding agreement" means an agreement for an  
1-32 insurer to accept and accumulate funds and to make one or more  
1-33 payments at future dates in amounts that are not based on mortality  
1-34 or morbidity contingencies.

1-35 (5) "Generic name" means a short title descriptive of  
1-36 the annuity contract being illustrated or for which an applicant is  
1-37 applying, such as "single premium deferred annuity."

1-38 (6) "Structured settlement annuity" means:

1-39 (A) a "qualified funding asset," as defined by  
1-40 Section 130(d), Internal Revenue Code of 1986; or

1-41 (B) an annuity that would be a qualified funding  
1-42 asset but for the fact that the annuity is not owned by an assignee  
1-43 under a qualified assignment.

1-44 Sec. 1116.003. DETERMINABLE ELEMENTS. (a) For purposes of  
1-45 this chapter, "determinable elements" means elements derived from  
1-46 processes or methods that are guaranteed at issue and are not  
1-47 subject to company discretion, but for which the values or amounts  
1-48 cannot be determined until some point after issue. The term  
1-49 includes:

1-50 (1) premiums;

1-51 (2) credited interest rates, including any bonus;

1-52 (3) benefits;

1-53 (4) values;

1-54 (5) noninterest based credits;

1-55 (6) charges; and

1-56 (7) elements of formulas used to determine any element  
1-57 described by Subdivisions (1)-(6).

1-58 (b) Determinable elements may be described as guaranteed  
1-59 but not determined at issue. An element is considered determinable  
1-60 if the element was computed from only underlying determinable  
1-61 elements, or from both determinable and guaranteed elements.

1-62 Sec. 1116.004. GUARANTEED AND NONGUARANTEED ELEMENTS. (a)

1-63 For purposes of this chapter, "guaranteed element" means an element

2-1 listed in Sections 1116.003(a)(1)-(7) that is guaranteed and  
 2-2 determined at issue. An element is considered guaranteed if all of  
 2-3 the underlying elements used in its computation are guaranteed.

2-4 (b) For purposes of this chapter, "nonguaranteed element"  
 2-5 means an element listed in Sections 1116.003(a)(1)-(7) that is  
 2-6 subject to the insurer's discretion and is not guaranteed at issue.  
 2-7 An element is considered nonguaranteed if any underlying element  
 2-8 used in its computation is nonguaranteed.

2-9 Sec. 1116.005. APPLICABILITY; SCOPE. (a) Except as  
 2-10 provided by Subsection (b), this chapter applies to all group and  
 2-11 individual annuity contracts and certificates.

2-12 (b) This chapter does not apply to:

2-13 (1) immediate and deferred annuities that do not  
 2-14 contain elements that are nonguaranteed;

2-15 (2) annuities used to fund:

2-16 (A) an employee pension plan subject to the  
 2-17 Employee Retirement Income Security Act of 1974 (29 U.S.C. Section  
 2-18 1001 et seq.);

2-19 (B) a plan described by Section 401(a), 401(k),  
 2-20 or 403(b), Internal Revenue Code of 1986, in which the plan, for  
 2-21 purposes of the Employee Retirement Income Security Act of 1974 (29  
 2-22 U.S.C. Section 1001 et seq.), is established or maintained by an  
 2-23 employer;

2-24 (C) a governmental or church plan as defined by  
 2-25 Section 414, Internal Revenue Code of 1986, or a deferred  
 2-26 compensation plan of a state or local government or a tax-exempt  
 2-27 organization under Section 457, Internal Revenue Code of 1986; or

2-28 (D) a nonqualified deferred compensation  
 2-29 arrangement established or maintained by an employer or plan  
 2-30 sponsor;

2-31 (3) a structured settlement annuity;

2-32 (4) a charitable gift annuity qualified under Chapter  
 2-33 102;

2-34 (5) a funding agreement; or

2-35 (6) an annuity contract used to fund a contract for  
 2-36 prepaid funeral benefits, as defined by Chapter 154, Finance Code.

2-37 (c) This chapter applies to an annuity used to fund a plan or  
 2-38 arrangement that is funded solely by contributions an employee  
 2-39 elects to make, whether on a pretax or after-tax basis, if the  
 2-40 insurer has been notified that plan participants may choose from  
 2-41 among two or more fixed annuity providers and there is a direct  
 2-42 solicitation of an individual employee by a producer for the  
 2-43 purchase of an annuity contract. As used in this subsection,  
 2-44 "direct solicitation" does not include a meeting held by a producer  
 2-45 solely for the purpose of educating or enrolling employees in the  
 2-46 plan or arrangement.

2-47 Sec. 1116.006. BUYER'S GUIDES. (a) The commissioner by  
 2-48 rule shall adopt buyer's guides for consumers who are considering  
 2-49 purchasing an annuity contract or certificate.

2-50 (b) In adopting buyer's guides under this section, the  
 2-51 commissioner may adopt the buyer's guides published by the National  
 2-52 Association of Insurance Commissioners or similar comprehensive  
 2-53 guides produced by the department or published by national  
 2-54 insurance organizations recognized by the commissioner. If a  
 2-55 buyer's guide to a particular type of annuity has not been adopted  
 2-56 nationally, the commissioner may not adopt a buyer's guide for that  
 2-57 type of annuity.

2-58 Sec. 1116.007. EFFECT ON OTHER LAW. Compliance with this  
 2-59 chapter or rules implementing this chapter is not an affirmative  
 2-60 defense in any action brought by or for the department alleging a  
 2-61 violation of Chapter 541, 1114, or 1115.

2-62 [Sections 1116.008-1116.050 reserved for expansion]

2-63 SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

2-64 Sec. 1116.051. STANDARDS FOR DISCLOSURE DOCUMENT AND  
 2-65 BUYER'S GUIDE. (a) If an application for an annuity contract or  
 2-66 certificate is taken in a face-to-face meeting, the applicant shall  
 2-67 be given, at or before the time of application, both the disclosure  
 2-68 document described by Section 1116.052 and the appropriate buyer's  
 2-69 guide.

3-1 (b) If the application is taken by means other than in a  
 3-2 face-to-face meeting, the applicant shall be sent both the  
 3-3 disclosure document and the appropriate buyer's guide not later  
 3-4 than the fifth business day after the date on which the completed  
 3-5 application is received by the insurer.

3-6 (c) If the application is received as a result of a direct  
 3-7 solicitation through the mail, providing the appropriate buyer's  
 3-8 guide and the disclosure document in a mailing inviting prospective  
 3-9 applicants to apply for an annuity contract or certificate is  
 3-10 considered to satisfy the requirement that the appropriate buyer's  
 3-11 guide and the disclosure document be provided not later than the  
 3-12 fifth business day after the date of receipt of the application.

3-13 (d) If the application is received through the Internet,  
 3-14 taking reasonable steps to ensure that the appropriate buyer's  
 3-15 guide and the disclosure document are available for viewing and  
 3-16 printing on the insurer's website is considered to satisfy the  
 3-17 requirement that the appropriate buyer's guide and the disclosure  
 3-18 document be provided not later than the fifth business day after the  
 3-19 date of receipt of the application.

3-20 (e) A solicitation for an annuity contract that is provided  
 3-21 in a manner other than a face-to-face meeting must include a  
 3-22 statement that the proposed applicant may contact the department  
 3-23 for a free annuity buyer's guide or that the prospective applicant  
 3-24 may contact the insurer for a free annuity buyer's guide.

3-25 (f) If the appropriate buyer's guide and the disclosure  
 3-26 document are not provided at or before the time of application, a  
 3-27 free look period of at least 15 days must be provided during which  
 3-28 the applicant may return the annuity contract without penalty.  
 3-29 This period shall run concurrently with any other free look period  
 3-30 required under this code or another law of this state. An  
 3-31 unconditional refund without penalty for purposes of this  
 3-32 subsection for variable or modified guaranteed annuity contracts  
 3-33 shall mean a refund equal to the cash surrender value provided in  
 3-34 the annuity contract, plus any fees or charges deducted from the  
 3-35 premiums or imposed under the contract. The refund and free look  
 3-36 period in this subsection do not apply if the prospective owner is  
 3-37 an accredited investor, as defined in Regulation D as adopted by the  
 3-38 United States Securities and Exchange Commission.

3-39 Sec. 1116.052. DISCLOSURE DOCUMENT. (a) At a minimum, the  
 3-40 following information must be included in the disclosure document  
 3-41 required to be provided under this chapter:

3-42 (1) the generic name of the contract, the insurer  
 3-43 product name, if different from the generic name, the insurer's  
 3-44 form number, and a statement of the fact that the contract is an  
 3-45 annuity;

3-46 (2) the insurer's name and address;  
 3-47 (3) a description of the contract and the benefits  
 3-48 provided under the contract, emphasizing the contract's long-term  
 3-49 nature, and including examples as appropriate;

3-50 (4) the guaranteed, nonguaranteed, and determinable  
 3-51 elements of the contract, any limitations of those elements, and an  
 3-52 explanation of how those elements operate;

3-53 (5) an explanation of the initial crediting rate,  
 3-54 specifying any bonus or introductory portion, the duration of the  
 3-55 initial crediting rate, and the fact that rates may change from time  
 3-56 to time and are not guaranteed;

3-57 (6) periodic income options, both on a guaranteed and  
 3-58 nonguaranteed basis;

3-59 (7) any value reductions caused by withdrawals from or  
 3-60 surrender of the contract;

3-61 (8) how values in the contract can be accessed;

3-62 (9) the death benefit, if available, and how the death  
 3-63 benefit is computed;

3-64 (10) a summary of:  
 3-65 (A) the federal tax status of the contract; and  
 3-66 (B) any penalties applicable on withdrawal of  
 3-67 values from the contract;

3-68 (11) the impact of any rider, such as a long-term care  
 3-69 rider;

4-1 (12) a list of the specific dollar amount or  
 4-2 percentage charges and fees, with an explanation of how those  
 4-3 charges and fees apply; and

4-4 (13) information about the current guaranteed rate for  
 4-5 new contracts that contains a clear notice that the rate is subject  
 4-6 to change.

4-7 (b) An insurer shall define terms used in the disclosure  
 4-8 document in language that facilitates the understanding by a  
 4-9 typical person within the segment of the public to which the  
 4-10 disclosure document is directed.

4-11 (c) A disclosure document that complies with the Financial  
 4-12 Industry Regulatory Authority (FINRA) Conduct Rules and Securities  
 4-13 and Exchange Commission prospectus requirements satisfies the  
 4-14 requirements of this section for disclosure documents. This  
 4-15 subsection does not limit the commissioner's ability to enforce the  
 4-16 provisions of this section or require the use of a FINRA-approved  
 4-17 disclosure document. This subsection is intended to grant a safe  
 4-18 harbor under this chapter for an annuity contract that is regulated  
 4-19 by, and complies with, the FINRA Conduct Rules and the SEC  
 4-20 prospectus requirements pertaining to disclosure.

4-21 Sec. 1116.053. REPORT TO CONTRACT OWNERS. (a) For  
 4-22 annuities in the payout period with changes in nonguaranteed  
 4-23 elements and for the accumulation period of a deferred annuity, the  
 4-24 insurer shall provide each contract owner with a report, at least  
 4-25 annually, on the status of the contract.

4-26 (b) The report must contain at least the following  
 4-27 information:

4-28 (1) the beginning and ending date of the current  
 4-29 reporting period;

4-30 (2) the accumulation and cash surrender value, if any,  
 4-31 at the end of:

4-32 (A) the previous reporting period; and

4-33 (B) the current reporting period;

4-34 (3) the total amounts, if any, that have been  
 4-35 credited, charged to the contract or certificate value, or paid  
 4-36 during the current reporting period; and

4-37 (4) the amount of any outstanding loans as of the end  
 4-38 of the current reporting period.

4-39 [Sections 1116.054-1116.100 reserved for expansion]

4-40 SUBCHAPTER C. ENFORCEMENT

4-41 Sec. 1116.101. VIOLATION. A violation of a requirement of  
 4-42 this chapter by an insurer or agent constitutes an unfair or  
 4-43 deceptive act or practice in the business of insurance for purposes  
 4-44 of Chapter 541.

4-45 SECTION 2. Section 1114.004(a), Insurance Code, is amended  
 4-46 to read as follows:

4-47 (a) Except as otherwise specifically provided by this  
 4-48 chapter, this chapter does not apply to transactions involving:

4-49 (1) credit life insurance;

4-50 (2) group life insurance or group annuities for which  
 4-51 there is no direct solicitation of individuals by an agent;

4-52 (3) [group] life insurance and annuities used to fund  
 4-53 prepaid funeral benefits contracts, as defined by Chapter 154,  
 4-54 Finance Code;

4-55 (4) an application to:

4-56 (A) exercise a contractual change or a conversion  
 4-57 privilege made to the insurer that issued the existing policy or  
 4-58 contract;

4-59 (B) replace an existing policy or contract by the  
 4-60 insurer that issued the existing policy or contract under a program  
 4-61 filed with and approved by the commissioner; or

4-62 (C) exercise a term conversion privilege among  
 4-63 corporate affiliates;

4-64 (5) life insurance proposed to replace life insurance  
 4-65 under a binding or conditional receipt issued by the same insurer;

4-66 (6) a policy or contract used to fund:

4-67 (A) an employee pension benefit plan or employee  
 4-68 welfare benefit plan that is covered by the Employee Retirement  
 4-69 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

5-1 (B) a plan described by Section 401(a), 401(k),  
5-2 or 403(b), Internal Revenue Code of 1986, if established or  
5-3 maintained by an employer;

5-4 (C) a government or church plan, as defined by  
5-5 Section 414, Internal Revenue Code of 1986, a government or church  
5-6 welfare benefit plan, or a deferred compensation plan of a state or  
5-7 local government or tax exempt organization described under Section  
5-8 457, Internal Revenue Code of 1986; or

5-9 (D) a nonqualified deferred compensation  
5-10 arrangement established or maintained by an employer or plan  
5-11 sponsor;

5-12 (7) new coverage provided under a life insurance  
5-13 policy or contract if the cost is borne wholly by the insured's  
5-14 employer or by an association of which the insured is a member;

5-15 (8) an existing life insurance policy that is a  
5-16 nonconvertible term life insurance policy scheduled to expire in  
5-17 five years or less and that cannot be renewed;

5-18 (9) immediate annuities purchased with proceeds from  
5-19 an existing contract; or

5-20 (10) structured settlements.

5-21 SECTION 3. Section 541.058(b), Insurance Code, is amended  
5-22 to read as follows:

5-23 (b) It is not a rebate or discrimination prohibited by  
5-24 Section 541.056(a) or 541.057:

5-25 (1) for a life insurance or life annuity contract, to  
5-26 pay a bonus to a policyholder or otherwise abate the policyholder's  
5-27 premiums in whole or in part out of surplus accumulated from  
5-28 nonparticipating insurance policies if the bonus or abatement:

5-29 (A) is fair and equitable to policyholders; and

5-30 (B) is in the best interests of the insurer and  
5-31 its policyholders;

5-32 (2) for a life insurance policy issued on the  
5-33 industrial debit plan, to make to a policyholder who has  
5-34 continuously for a specified period made premium payments directly  
5-35 to the insurer's office an allowance in an amount that fairly  
5-36 represents the saving in collection expenses;

5-37 (3) for a group insurance policy, to readjust the rate  
5-38 of premium based on the loss or expense experience under the policy  
5-39 at the end of a policy year if the adjustment is retroactive for  
5-40 only that policy year;

5-41 (4) for a life annuity contract, to waive surrender  
5-42 charges under the contract when the contract holder exchanges that  
5-43 contract for another annuity contract issued by the same insurer or  
5-44 an affiliate of the same insurer that is part of the same holding  
5-45 company group if:

5-46 (A) the waiver and the exchange are fully,  
5-47 fairly, and accurately explained to the contract holder in a manner  
5-48 that is not deceptive or misleading; and

5-49 (B) the contract holder is given credit for the  
5-50 time that the prior contract was held when determining any  
5-51 surrender charges under the new contract;

5-52 (5) in connection with an accident and health  
5-53 insurance policy, to provide to policy or certificate holders, in  
5-54 addition to benefits under the terms of the insurance contract,  
5-55 health-related services or health-related information, or to  
5-56 disclose the availability of those additional services and  
5-57 information to prospective policy or certificate holders; or

5-58 (6) in connection with a health maintenance  
5-59 organization evidence of coverage, to provide to enrollees, in  
5-60 addition to benefits under the evidence of coverage, health-related  
5-61 services or health-related information, or to disclose the  
5-62 availability of those additional services and information to  
5-63 prospective enrollees or contract holders.

5-64 SECTION 4. Subchapter B, Chapter 1114, Insurance Code, is  
5-65 amended by adding Section 1114.057 to read as follows:

5-66 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF  
5-67 SURRENDER CHARGES. An insurer that offers to waiver surrender  
5-68 charges consistent with Section 541.058(b)(4) of this code shall  
5-69 provide reasonable notice of such offer to its prospective or

6-1 current contract holders. Such notice may be included through any  
6-2 available means, including a disclosure document or displayed on a  
6-3 link that is prominently placed on the insurer's web page.

6-4 SECTION 5. The change in law made by this Act applies only  
6-5 to an application for an annuity contract or certificate, or a  
6-6 solicitation for an annuity contract, made on or after January 1,  
6-7 2010. An application for an annuity contract or certificate, or a  
6-8 solicitation for an annuity contract, made before January 1, 2010,  
6-9 is governed by the law in effect immediately before the effective  
6-10 date of this Act, and that law is continued in effect for that  
6-11 purpose.

6-12 SECTION 6. This Act takes effect September 1, 2009.

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